

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

JOSE CASTELLANOS,

v.

**HOME DEPOT U.S.A. INC.,
D/B/A THE HOME DEPOT**

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CIVIL ACTION NO. 4:21-cv-21-02010

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant HOME DEPOT U.S.A., INC. (“Home Depot”), Defendant in the above-entitled and –numbered cause, and files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

I. BACKGROUND

1. Home Depot is the defendant in a civil action pending in the 430th Judicial District Court of Hidalgo County, Texas, entitled Cause No. C-1838-21-J; *Castellanos, Jose Luis v. Home Depot U.S.A., Inc.*; In the 430th Judicial District Court, Hidalgo County, Texas. (hereinafter referred to as the “State Court Action”). An Index of State Documents Filed with the Notice of Removal is attached hereto as Exhibit “A” and true and correct copies of all process, pleadings, and orders served upon Home Depot in the State Court Action are attached hereto as Exhibit “B,” as required by 28 U.S.C. § 1446(a).
2. The State Court Action was filed on May 13, 2021. Home Depot was served with Plaintiff’s Original Petition (hereinafter referred to as the “Petition”) on May 21, 2021. The Petition asserts negligence claims against Home Depot, based on a personal injury accident that allegedly occurred in a Home Depot Store in Hidalgo County, Texas on November 18, 2019, when lumber fell from a shopping cart on to Plaintiff Jose Luis Castellanos’ (“Plaintiff”) shoulder and arm at the store’s parking lot.

3. In the Petition, Plaintiff specifically states that he is seeking monetary relief over \$1,000,000.00. Thus, it is facially apparent from the Petition that Plaintiff seeks damages in excess of \$75,000.00, such that the amount in controversy requirement for diversity jurisdiction is satisfied. Therefore, this Notice of Removal is timely filed within thirty (30) days of service of process of the first pleading or other paper from which it could be determined that the amount in controversy is in excess of \$75,000.00, exclusive of costs. *See* 28 U.S.C. § 1446(b).

II. DIVERSITY OF CITIZENSHIP

4. Plaintiff is, and was at the time of filing of this action, a citizen of the State of Texas.
5. Home Depot is, and was at the time of the filing of this action, a corporation incorporated under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. Consequently, Home Depot is a citizen of the States of Delaware and Georgia.
6. Consequently, the district courts of the United States have original jurisdiction over this action based on complete diversity of citizenship amongst and between the parties, in that Plaintiff and Home Depot are now, and were at the time this action commenced, diverse in citizenship from each other.
7. Under 28 U.S.C. § 1446(a), venue of the removed action is proper in this Court as it is the district and division embracing the place where the State Court Action is pending.
8. Pursuant to 28 U.S.C. § 1446(d), Home Depot will promptly give written notice of the filing of this notice of removal to Plaintiff and will further file a copy of this Notice of Removal with the District Clerk of Hidalgo County, Texas, where the State Court Action was previously pending.
9. **Jury Demand** – Home Depot hereby requests a trial by jury on all issues and claims in this cause.

WHEREFORE, Defendant Home Depot U.S.A., Inc. hereby removes the case styled Cause No. C-1838-21-J; *Castellanos, Jose Luis v. Home Depot U.S.A., Inc.*; In the 430th Judicial District Court, Hidalgo County, Texas, and respectfully requests that this Court assume full

jurisdiction of this proceeding for all purposes as if originally filed in this Court, including but not limited to issuing any orders necessary to stay proceedings in the State Court Action.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Joelle G. Nelson

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**ATTORNEYS FOR DEFENDANT,
HOME DEPOT U.S.A, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record pursuant to the Federal Rules of Civil Procedure on this the 18th day of June 2021:

Counsel for Plaintiff

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/ s / Joelle G. Nelson

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